



# UNITED STATES PATENT AND TRADEMARK OFFICE

ITW

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/643,824      | 08/18/2003  | Ernest Peter Nelson  |                     | 5165             |

7590 03/29/2006  
Keeling Hudson, L.L.C.  
901 North Post Oak Road  
Houston, TX 77024



|                |              |
|----------------|--------------|
| EXAMINER       |              |
| THANH, QUANG D |              |
| ART UNIT       | PAPER NUMBER |
| 3764           |              |

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/643,824

Applicant(s)

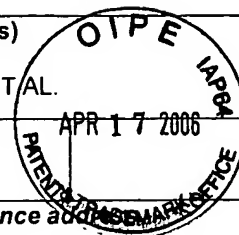
NELSON ET AL.

Examiner

Quang D. Thanh

Art Unit

3764



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-63 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-32, 42-61 and 63, drawn to a device for delivering mechanical vibration, classified in class 601, subclass 57.
  - II. Claims 33-41, drawn to a method of treatment of ulcers, lymphoedema and prophylactically of deep vein thrombosis, of the human or animal body, classified in class 128, subclass 898. Furthermore, claim 62, (which is unclear as to whether the claim is directed to a method of using a device, a method of manufacturing a device or a device?), as best understood by the examiner, also is drawn to a method of using a device for the treatment of ulcers, lymphoedema and prophylactically of deep vein thrombosis, of the human or animal body, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the process for using the product (the method of treatment) as claimed in group II can be practiced with

Art Unit: 3764

another materially different device that does not require all the elements as substantially claimed in group I.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. Furthermore, if applicant select group I as the elected invention, it is noted that this group contains claims 1-32, 42-61 and 63 directed to the following patentably distinct species:

Species I: figs 1, 3-4

Species II: figs. 12a,b,c

Species III: figs. 13

Therefore, applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Art Unit: 3764

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

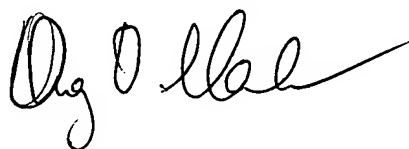
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
(571) 272-4982



TC3700 RANDOLPH

Organization Bldg./Room  
UNITED STATES PATENT AND TRADEMARK OFFICE

P.O. Box 1450

Alexandria, VA. 22313-1450

If Undeliverable Return In Ten Days

AN EQUAL OPPORTUNITY EMPLOYER

Official Business

Penalty For Private Use, \$300



02 1A  
\$ 00.630  
0004204479 MAR 29 2006  
MAILED FROM ZIP CODE 22314

RECEIVED

APR 17 2006

USPTO MAIL CENTER

7702422222-0450052

